IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Civil Misc. Writ Petition No. 1539 of 2002 (S/B)

1. Harish Chandra Joshi S/o Shri D.N. Joshi
   R/o Quarter No. P-II/10 Yamuna Colony
   Dehradun
2. Shri Chet Ram Dabral S/o Shri Hans Ram Dabral
   R/o Quarter No. E-22 Yamuna Colony
   Dehradun
3. Suresh Singh S/o Shri Veer Singh
   R/o 17 Subhash Road
   Dun Canal Colony
   Dehradun … Petitioners

Versus

1. State of Uttaranchal through Secretary
   Irrigation Department
   Sachivalaya Bhawan
   Dehradun
2. Chief Engineer & Head of the Irrigation Department
   Uttaranchal, Dehradun
3. Superintending Engineer (Personnel)
   Irrigation Department
   Uttaranchal, Dehradun … Respondents

Sri S.N. Babulkar, learned senior counsel assisted by Sri Tumul Nailwal counsel for the petitioners
Sri N.B. Shah, learned standing counsel for the respondents

Hon'ble B.C. Kandpal, J.

By way of this writ petition, the petitioners have sought the relief in the nature of mandamus commanding the respondent No. 2 to promote the petitioners to the post of Ziledar after completing the exercise contemplated under the Rules.

Brief facts of the case as emerged out from the present writ petition are that the petitioners No. 1 and 2 were initially appointed as Seench Paryavekshak on regular basis in Irrigation Department of erstwhile Government of U.P. w.e.f. 15.12.1994 and 27.05.1989 respectively. The petitioner No. 3 – Suresh Singh was appointed as Seenchpal on 20.04.1974 and subsequently he was promoted to the post of Seench Paryavekshak on 08.11.1992.

All the petitioners at present are serving on the post of Seench Paryavekshak, in different Division of Irrigation Department. The post of Seench Partyavekshak is the feeder post for promotion to the post of Ziledar.

As per the petition, the Chief Engineer and Head of the Irrigation Department, Uttaranchal constituted a committee in accordance with the provision of the aforesaid rules for promotion to the post of Ziledar by means of letter dated 24.02.2004 and Superintendent Engineer, Sichai Karya Mandal, Dehradun was appointed as Chairman of the committee, who fixed 29.04.2001, date of Ziledar Qualifying Examination. The petitioners appeared in the examination and were allotted the roll numbers 1, 2 and 4 respectively. The petitioners were declared successful in the qualifying examination which was held on 29.04.2001.

Thereafter, the Chief Engineer, Irrigation Department or the Officers concerned to furnish the service record of the successful candidates in order to determine their seniority vide letter dated 06.07.2001. The Superintendent Engineer thereafter, asked the Executive Engineer Nal Koop Khand, Haldwani on 26.09.2001 to submit the certified copy of the character role of all the successful candidates.

The petitioners have further averred in the petition that no further action has yet been taken in pursuance to the aforesaid select list by the Department. Neither the Department determined the seniority of those selected candidates nor promoted the petitioners on the post of Ziledar to which they were duly selected.

The petitioners have also averred that they have made several representations to the respondent No. 2 requesting them to appoint on the post of Ziledar. They have not received any responsibility as yet hence this writ petition.

Counter affidavit has been filed by the respondents and thereafter the petitioners have also filed the rejoinder affidavit.

Heard learned counsel for the parties and perused the record.

It is pertinent to mention some relevant rules which are as follows:-

Rule 5 of Irrigation Department Ziledar Service Rules, 1963 for governing the service conditions, mode of recruitment / promotion for Ziledar, makes it clear that the recruitment to the post of Ziledar shall be made by promotion only amongst Amins (presently known as Seench Paryavekshak) serving in the Department.

Again Rule 6 of the aforesaid rule envisages about the eligibility for promotions and it provides that no Amins shall be considered for promotion unless he had passed the qualifying examination prescribed in Rule 15 and further that he has continuously worked as Amin for not less than 7 years.

Again Rule 8 also specifies the criteria of seniority subject to rejection or unfit for making promotion to the aforesaid post. It provides that the committee shall consider the case of candidates included in the list prepared under Rule 7 and after examining their character role, shall select in accordance with the criteria prescribed in Sub-rule 1, the candidates who are considered suitable for promotion will be called approved/successful candidates.

In view of the aforesaid provisions the petitioners who were possessed of all requisite qualification as provided under the rule submitted their application for appearing in the qualifying examination and they were subsequently declared selected candidates. Therefore, a list of the selected candidate who were declared qualified in the examination held on 29.04.2001 and the list runs as follows:-

" *कार्यालय मुख्य अभियन्ता एवं विभागाध्यक्ष*

(कार्मिक अनुभाग) सिंचाई विभाग, उत्तरांचल

देहरादून

संख्या 3001/मु0अ0/कार्मिक/ई–21 *दिनांक देहरादून जून 27,2001*

कार्यालय ज्ञाप

जिलेदार के पदों पर पदोन्नति हेतु दिनांक 29–4–2001 को सम्पन्न जिलेदारी अर्हकारी परीक्षा 2001 में सिंचाई विभाग, उत्तरांचल के निम्नलिखित सींच पर्यवेक्षक को उतद्द्वारा उत्तीर्ण घोषित किया जाता है:

क्रमांक	*अनुक्रमांक*	*नाम/जन्मतिथि/ पिता का नाम*	*खण्ड का नाम जहॉ कार्यरत हैं*
1	*01*	*श्री हरीश चन्द्र जोशी (6–3–62) पुत्र श्री डी0एन0 जोशी*	*अनुसंधान एवं नियोजन खण्ड (बड़कोठ) देहरादून*
2	*02*	*श्री चेतराम डबराल (16–3–62) पुत्र श्री हंस राम डबराल*	*सिंचाई खण्ड, देहरादून*
3	*03*	*श्री लक्षमण सिंह भण्डारी (1–1–59) पुत्र श्री इन्द्र सिंह भण्डारी*	*नलकूप खण्ड, हल्द्वानी*
4	*04*	*श्री सुरेश सिंह (7–8–52) पुत्र श्री वीर सिंह*	*नलकूप खण्ड, देहरादून*
5	*11*	*श्री हरीश चन्द्र लोहनी (1–8–53) पुत्र श्री वीर सिंह*	*सिंचाई खण्ड, बागेश्वर*

The aforesaid list shows the name of the petitioners at serial No. 1, 2 and 4. therefore, it is quite clear that the petitioners qualified the examination, which was held on 29.04.2001.

The petitioner has also annexed – annexure 5 to this writ petition which shows that the Chief Engineer vide letter dated 26.09.2001 asked the officer concerned to furnish the service record of the successful candidates. This letter reads as follows:-

“ कार्यालय मुख्य अभियन्ता एवं विभागाध्यक्ष

(कार्मि अनुभाग)

सिचाई विभाग, उत्तरांचल देहरादून

संख्या:6536/मु0अ0/का0/ई–2/प्र0 दिनांक देहरादून सितम्बर 26, 01

विषयः– सींच पर्यवेक्षकों की गत 10 वर्षो की चरित्र पंजिका का सार एंव सेवा विवरण उपलब्ध कराये जाने के सम्बन्ध में

अधिशासी अभियन्ता, नलकूप खण्ड, हल्द्वानी

सिंचाई विभाग, उत्तरांचल, के परिक्षेत्र के राजस्व अधिष्ठान के अर्न्तगत जिनेदारी अर्हकारी परीक्षा उत्तीर्ण पर्वतीय उप सम्बवर्ग के सींचार्पवेक्षकों की पर्वतीय उप संवर्ग के अर्न्तगत जिलेदार के पद पर प्रोन्नत किये जाने हेतु इस कार्यालय में उपलब्ध सूचना अनुसार वर्ष 1997 एवं वर्ष 2001 की जिनेदारी अर्हकारी परीक्षा उत्तीर्ण निम्नलिखित सींचपर्यवेक्षकों के मामले पर विचार किये जाने की सम्भावना हैः–

क्र0स0	नाम	गृहजनपद/जन्मतिथि	खण्ड का नाम जहाँ कार्यरत है
1	सर्वश्री राम किशोर (अनु0 जाति)	16–5–51/देहरादून	सिंचाई खण्ड–2, नरेन्द्र नगर
2	सर्वश्री हरीश चन्द्र लोहनी	7–8–53/अल्मोड़ा	सिंचाई खण्ड, बागेश्वर
3	सर्वश्री चेतराम डबराल	16–8–52/टिहरीगढ़वाल	सिचाई खण्ड, देहरादून
4	सर्व श्री सूरेश सिंह	7–8–52/देहरादून	नलकूप खण्ड, देहरादून
5	सर्व श्री लक्षमण सिंह भण्डारी	1–1–59/अल्मोड़ा	नलकूप खण्ड, हल्द्वानी
6	सर्व श्री कुलदीप सिंह रावत	1–4–69/पौड़ीगढ़वाल	गढ़वाल सिंचाई खण्ड, लेन्सडोन
7	सर्व श्री हरीश चन्द्र जोशी	6–8–68/अल्मोड़ा	अनुसंधान एवं नियोजन खण्ड (बड़कोट) देहरादून

इस सम्बन्ध में मुझे यह कहने का निर्देश प्राप्त हुआ है कि कृप्या उक्त सींच पर्यवेक्षकों में से अपने खण्ड से सम्बन्धित सींच पर्यवेक्षकों की गत 10 वर्षो की अर्थात वर्ष 1992–93 से वर्ष 2000–2001 तक की चरित्र पंजिकाओं की प्रभावित प्रतिलिपि लौटती डाक से तत्काल इस कार्यालय को उपलब्ध कराने का कष्ट करें।

इसके अतिरिक्त यह भी कहने का निर्देश हुआ कि विषयगत प्रकरण के सम्बन्ध में संलग्नक प्रपत्र–1 पर वांछित सूचना भी उपलब्ध कराना सुनिश्चित करें।

संलग्न–यथोक्त

(सागर चन्द्र)
अधीक्षण अभियन्ता (कार्मिक)
कृते मुख्य अभियन्ता एवं विभगाध्यक्ष"

Perusal of the aforesaid letter makes the picture clear that the service record of the selected candidates were also summoned for perusal in order to make the promotions finally vide letter dated 26.09.2001 but to utter surprise the matter has not been finalized as yet and the respondents have not come with an definite case as to what is the reason for this delay.

The respondents have filed the counter affidavit and they have filed in annexure C.A.-2 to the counter affidavit by which they have declared the seniority list of all Seench Partyavekshak vide order dated 20.12.2002.

The respondents in paragraph – F of the counter affidavit have averred as follows:-

> *"F. That the respondent No. 2 has issued the seniority list of all the successful candidates and the respondent No. 2 has also sent the said list to the Divisional Office for clarification and verification for the promotion of successful candidates to the post of Ziledar and the matter is under progress. Copy of the said seniority list is annexed herewith and marked as annexure No. C.A.2 to this counter affidavit. Hence, the present writ petition is premature and not maintainable and is liable to be dismissed with costs."*

The averments made in the counter affidavit clearly shows that the matter pertaining to the promotion of the successful candidates to the post of Ziledar is under progress.

It is pertinent to mention here that the seniority list of the selected candidates was issued by the respondent No. 2 on 20.12.2002 and it was sent to the Divisional Office for clarification and verification for the promotion of successful candidates to the post of Ziledar on 20.12.2002 but even after the lapse of more than 2 $^{1}/_{2}$ years the promotion list has not taken the final shape which itself is surprising.

The Hon'ble Apex Court in a case cited in ***JT 1999(7) SC 153 Ajit Singh & others Vs. The State of Punjab & others*** has ruled:-

> *"That Article 14 and Article 16(1) are closely connected. They deal individual rights of the person. Article 14 demands that the "State shall not deny to any person equality before the law or the equal protection of the laws."*
>
> *Article 16 (1) issues a positive command that "there shall be equality of opportunity for all citizens in the matters relating to employment or appointment to any office under the State." It has*

been repeatedly by this Court that Sub-clause (1) of Article 16 is a facet of Article 14 and that it takes its roots particularizes the generality in Article 14 and identifies, in a constitutional sense "equality opportunity" in a constitutional sense "equality opportunity" in matters of employment and appointment to any office under the State. The work 'employment' being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment.

Article 16(1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, the fundamental right to be "considered" for promotion. Equal opportunity here means the right to be "considered" for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be "considered" for promotion, which is his personal right."

In view of the judgment cited above as well as the documents filed by the parties before this Court, I am of the definite view that the petitioners have fallen within the zone of consideration. They have qualified the requisite test but even after having been declared in the qualifying examination, the case of the petitioners is not taking final shape and for this reason they have been deprived of their promotion.

On the basis of the above discussion, I come to the conclusion that the present writ petition deserves to be allowed.

Accordingly, the writ petition is allowed and writ in the nature of mandamus is issued commanding the respondent No. 2 to finalize the promotion of the petitioners to the post of Ziledar after completing the exercise contemplated under the Rules within a period of three months.

With the above observations, the writ petition is finally disposed of.

(B.C. Kandpal, J.)

23.06.2005
ASWAL